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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Federal Communications Commission
Office of Secretary

In the Matter of)

Petitions for Forbearance)

from Application of Section 272 of the)
Communications Act of 1934, as Amended,)
to Previously Authorized Services)

CC Docket No. 96-149

COMMENTS OF MCI TELECOMMUNICATIONS CORPORATION
ON PETITIONS FOR FORBEARANCE

Pursuant to the corrected Public Notice released in this docket on March 25, 1997,¹ MCI Telecommunications Corporation (MCI), by its undersigned attorneys, submits these comments on the petitions filed in this docket by Bell Atlantic, US West Communications, Inc., Southwestern Bell Telephone Company and Pacific Telesis Group for forbearance from the application of Section 272 of the Communications Act to their E911 services.² As explained below, application of nondiscrimination safeguards equivalent to the nondiscrimination requirements of Section 272(c)(1) and (e) to the Bell Operating Companies' (BOCs') E911 services is necessary for the protection of competition and the

¹ Correction, Pleading Cycle Established for Comments on Petitions for Forbearance from Application of Section 272 of the Communications Act to Previously Authorized Services, CC Docket No. 96-149, DA 97-599 (released March 25, 1997).

² Bell Atlantic Petition for Forbearance (filed March 7, 1997) (Bell Atlantic Pet.); US West Communications, Inc. Petition for Forbearance (filed March 14, 1997) (US West Pet.); Reply of Southwestern Bell Telephone Company to BellSouth's Petition for Forbearance, and, in the Alternative, Petition for Forbearance of Southwestern Bell Telephone Company (filed March 17, 1997) (SWB Pet.); Pacific Telesis Group Petition for Forbearance (filed March 19, 1997) (PacTel Pet.).

public interest.

Introduction

As the BOCs acknowledge in their petitions for forbearance under Section 10 of the Communications Act, 47 U.S.C. § 160, previously authorized interLATA information services, such as their E911 services, are subject to the separation and nondiscrimination requirements of Section 272. Section 10 requires the Commission to forbear from applying any provision of the Act if it determines that: enforcement of such provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in conjunction with a carrier or service are just and reasonable and not unreasonably discriminatory; enforcement of such provision is not necessary for the protection of consumers; and forbearance is consistent with the public interest. 47 U.S.C. § 160(a).

The petitioners assert that provision of their E911 services on an unseparated basis has already been found to be in the public interest and otherwise meets the criteria of Section 10. They argue that application of the Section 272 separation requirements to these services will be disruptive and will increase the cost of providing them, to the detriment of consumers.

A. The Petitions Must be Denied as to the Nondiscrimination Requirements of Section 272

As a preliminary matter, it is extremely doubtful that

forbearance from the nondiscrimination provisions of Section 272, or, for that matter, any nondiscrimination requirements, would ever be appropriate for a dominant carrier in any conceivable circumstances. As pointed out above, one of the requirements for the granting of a request for forbearance from the application of a provision of the Communications Act is that "enforcement of such ... provision is not necessary to ensure that ... practices ... by [a] ... carrier ... are not unjustly or unreasonably discriminatory." 47 U.S.C. § 160(a)(1). Since the marketplace cannot be relied upon to prevent unjust or unreasonable discrimination by a dominant carrier, and, particularly, a carrier controlling the local exchange network, it is inconceivable that there would ever be a situation in which enforcement of a nondiscrimination requirement would not be "necessary to ensure that" a BOC's practices "are not unjustly or unreasonably discriminatory." Because of this inherent contradiction in granting forbearance from the application of any nondiscrimination requirements to a BOC, no BOC petition for forbearance from the nondiscrimination requirements of Section 272(c)(1) and (e) could legally be granted.

It is difficult to tell whether the four petitions at issue here seek forbearance from the application of both the nondiscrimination and separation requirements of Section 272 or only the latter. They only address the separation requirements, but, except for US West,³ generally request forbearance from the

³ US West Pet. at 1.

application of "the requirements of Section 272,"⁴ suggesting both the separation and nondiscrimination requirements. To the extent that they seek forbearance as to the requirements of Section 272(c)(1) and (e), they must be denied.

US West has pointed out previously, however, that the nondiscrimination requirements of Section 272 are framed in terms of equality between the separated affiliate and other entities and thus cannot be literally applied to the unseparated provision of interLATA services.⁵ Thus, it may be necessary to require separation of the E911 services from the BOCs' local exchange services simply in order to apply the nondiscrimination requirements of Section 272. The BOCs would no doubt argue that separation would be too disruptive and that it is therefore necessary to maintain unseparated E911 services even if that means that the nondiscrimination requirements of Section 272 cannot be applied.

It is crucial, however, that nondiscrimination requirements equivalent to those in Sections 272(c)(1) and (e) be imposed on the BOCs' provision of E911 services. As the Commission is aware, MCI is under a legal obligation to provide emergency operator services on an interLATA basis and thus requires nondiscriminatory access to the emergency numbers contained in

⁴ PacTel Pet. at 1.

⁵ Reply Comments of US West, Inc. at 3, Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, CC Docket No. 96-149 (filed March 17, 1997).

the BOCs' (as well as other incumbent local exchange carriers') E911 databases and used in the provision of E911 services as well as the ability to upload MCI's customer records into E911 databases for purposes of delivering 911 calls. All of the public safety concerns cited by the BOCs apply equally to MCI's provision of interLATA emergency operator services, requiring that MCI have access to emergency response agency telephone numbers to support those legally mandated MCI services.

Such nondiscriminatory access to emergency numbers is also required by Section 251 of the Act. The First Interconnection Order⁶ held that E911 is one of the capabilities included within the local switching element that an incumbent LEC must make available on an unbundled basis upon request to a telecommunications carrier under Section 251(c)(3).⁷ Moreover, incumbent LECs are required "to provide access and unbundled elements that are at least equal-in-quality to what the incumbent LECs provide themselves...."⁸ Thus, an incumbent LEC must make available to competing providers nondiscriminatory access to the emergency numbers in its E911 databases that is at least equivalent to the ILEC's own access. Finally, as Bell Atlantic and US West point out, provision to competitive providers of

⁶ First Report and Order, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket No. 95-185, FCC 96-235 (released Aug. 8, 1996).

⁷ Id. at ¶¶ 410-12.

⁸ Id. at ¶ 313.

nondiscriminatory access to E911 service is a condition of long distance entry under Section 271(c)(2)(B)(vii)(I).⁹

Accordingly, it is necessary to apply nondiscrimination requirements equivalent to those in Section 272(c)(1) and (e) to the emergency numbers used in the BOCs' provision of E911 services. The petitioners must therefore be required to treat all other entities as they treat themselves for such purposes, at the same terms and conditions and on an equally timely basis, and at the same imputed charges.

B. Other Legal Requirements Cannot Substitute for Nondiscrimination Requirements Equivalent to Section 272(c)(1) and (e)

Bell Atlantic and US West suggest that since nondiscriminatory access to E911 service is a condition of long distance entry, application of the nondiscrimination requirements of Section 272 is not necessary and may be forborne.¹⁰ Ideally, that might be true, but the Section 271 checklist has no "bite" unless and until a BOC applies for in-region authority.

Moreover, at least some of the BOCs do not seem to be constrained by other nondiscrimination requirements. In its Reply in support of its Petition for Forbearance from the application of Section 272 to its reverse directory assistance service, BellSouth argued that application of Section 272 is not required because of all of the other legal requirements

⁹ Bell Atlantic Pet. at 5 n.11; US West Pet. at 4 & n.6.

¹⁰ Id.

guaranteeing nondiscrimination, including Sections 202(a) and 251. BellSouth then rebutted its own argument by stating that it still was not going to make its entire directory assistance database available to MCI and that if MCI or any other competitive provider had a problem with that, they should file a formal complaint.¹¹ This Commodore Vanderbilt-era attitude is troublesome and heightens MCI's anxiety that only the most strict, explicit order in this proceeding can guarantee nondiscriminatory access to the emergency numbers in the BOCs' E911 databases.

Conclusion

Accordingly, these petitions should not be granted as to the nondiscrimination requirements of Section 272(c)(1) and (e), since they, or equivalent requirements applicable to unseparated E911 services, are necessary to provide the nondiscriminatory access to emergency numbers in the E911 databases that is so

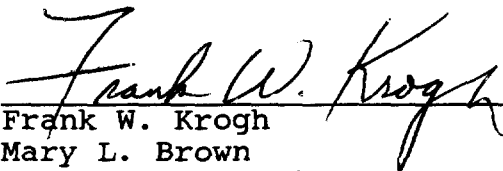
¹¹ BellSouth Reply at 7-10, BellSouth Petition for Forbearance from Application of Section 272 of the Communications Act of 1934, as Amended, to Previously Authorized Services, CC Docket No. 96-149 (filed March 17, 1997).

necessary to the development of full local competition.

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Dated: March 21, 1997

CERTIFICATE OF SERVICE

I, Sylvia Chukwuocha, do hereby certify that a true copy of the foregoing "COMMENT ON PETITIONS FOR FOREBEARANCE" was served this 21st day of April, 1997, by hand-delivery or first-class mail, postage prepaid, upon each of the following persons:

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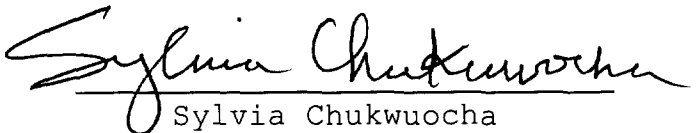
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